

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



74-1309

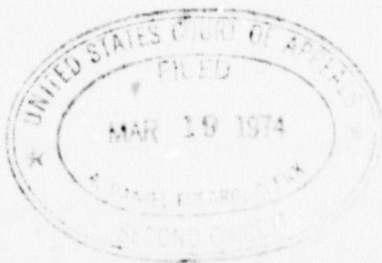
UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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In the Matter of	:	In Proceedings for
	:	an Arrangement
UNISHOPS, INC.	:	No. 73-B-1208
	:	Docket Number
Debtor-Appellant	:	74-1309

-----x

BRIEF OF APPELLEES  
QUESTOR EDUCATION PRODUCTS CO.  
AND CHILD HORIZONS INC.



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UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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In the Matter of

UNISHOPS, INC.

Debtor-Appellant

-----x

: In Proceedings for  
: an Arrangement  
: No. 73-B-1208

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BRIEF OF APPELLEES  
QUESTOR EDUCATION PRODUCTS CO.  
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UNITED STATES COURT OF APPEALS  
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UNISHOPS, INC. :  
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BRIEF FOR APPELLEES  
QUESTOR EDUCATION PRODUCTS CO.  
AND CHILD HORIZONS INC.

PRELIMINARY STATEMENT

Appellees, Questor Education Products Co. and Child Horizons Inc. submit this Brief in opposition to an appeal by Appellant, Unishops, Inc. ("Unishops"), from an order of the Honorable Charles Breiant, United States District Court Judge, dated March 4, 1974, affirming an order of the Honorable Roy Babitt, Bankruptcy Judge, denying the application of Appellant which sought to restrain all creditors of Appellant's subsidiaries from commencing or continuing actions against said subsidiaries.

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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In the Matter of

UNISHOPS, INC.

Debtor-Appellant

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: In Proceedings for  
An Arrangement  
: No. 73-B-1208

:  
Docket Number 74-1309

BRIEF OF APPELLEES  
QUESTOR EDUCATION PRODUCTS CO.  
AND CHILD HORIZONS INC.

FACTS

By Order to Show Cause dated December 13, 1973, the Appellant UNISHOPS INC. (the "debtor") obtained a stay of all creditors claiming to be creditors of its subsidiary corporations from pursuing claims against the subsidiaries. The said stay of all creditors has been continued throughout the course of this Appeal save for modification by District Court Judge Breiant excluding therefrom actions and claims for pre June 1, 1973 sales to subsidiaries.

In its application for the original stay order as well as in its application to this court to continue the stay of all creditors, the debtor contends that the suits pending and threatened were those of trade creditors who were in fact creditors of the debtor and not creditors of the several subsidiaries.



The claims of Appellees' QUESTOR EDUCATION PRODUCTS CO. ("Questor") and CHILD HORIZONS INC. ("Child Horizons") against debtor's subsidiary Goldfine's of Duluth, Minnesota, are each founded upon guarantees executed by the said Goldfine's. As shown in the answers filed by Appellees Questor and Child Horizons with the Bankruptcy Court the said guarantees were by endorsement upon Trade Acceptances accepted by the debtor herein on October 12, 1973 and given as an inducement to and as a condition for shipment of merchandise to the debtor at Duluth.

The debtor's application does not allege that the subsidiaries are insolvent, sham, dummies, conduits, or mere alter egos of the debtor. At the argument before the Bankruptcy Court on February 6, 1974, Judge Babitt took judicial notice that the subsidiaries were separate, independent, operating entities and dealt with as such by the public. Judge Breiant commented in his decision below. (P9):

"The subsidiaries are clearly not sham, nor can movant so allege reasonably. They were free standing operating corporations \*\*\*\*."

#### THE ISSUE

1. Does the Bankruptcy Court have jurisdiction to restrain actions of all creditors and more particularly

creditors who hold guaranty obligations of a subsidiary of the debtor which is not a party to the insolvency proceeding.

#### ARGUMENT

The general rule as enunciated by this court in Beck and Gobel is that the Bankruptcy Act does not authorize the court to enjoin prosecution of a suit against a wholly independent subsidiary. (In re Beck Industries, Inc., 479 F.2d 410, (2nd Cir. 1973); In re Gobel, 80 F.2d 849 (2nd Cir. 1936)).

The whole thrust of the debtor's application and argument is that the persons which it seeks to stay are creditors of the debtor and not creditors of the subsidiaries.

This argument clearly cannot apply to appellees Questor and Child Horizons who hold instruments of guaranty signed by a subsidiary. Clearly a subsidiary which is not a party to the insolvency proceeding should be answerable in a stay court action to a holder of its written guaranty.

The guaranty claims of Questor and Child Horizons are against the subsidiary Goldfine's and not against the debtor herein. The suit on those guaranty claims would not be against this debtor nor would it be a judicial proceeding to enforce a lien upon this debtor's Estate.



No property of this debtor would be involved. Consequently such actions are not subject to the stay provisions of the Bankruptcy Act. ( 11 U.S.C. §29; 11 U.S.C. §714).

CONCLUSION

The order of the District Court affirming the order of the Bankruptcy Court denying the application of the debtor should be affirmed as a matter of law, but should the Circuit Court decide to continue the stay of trade creditors, the stay should be modified to exclude therefrom creditors Questor Education Products Co. and Child Horizons Inc. and other similar creditors who may hold written instruments of guaranty from the several subsidiaries.

Respectfully submitted,

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STATE OF NEW YORK    }  
COUNTY OF NEW YORK } S.S.:

SAMUEL GRAFTON, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 5620 Netherland Avenue, Bronx, New York 10471.

That on the 18th day of March 1974, deponent served the within Appellees' Brief upon all the parties shown in Schedule "A" annexed hereto as attorneys and interested parties in this action at the addresses designated by said attorneys and parties for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me,

this 18th day of March, 1974.

*William J. Popper*

WILLIAM J. POPPER  
Notary Public, State of New York  
No. 3137555  
Qualified in Westchester County  
~~Not a Notary in New York County~~  
Commission Expires March 30, 1975

*Samuel Grafton*

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